IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

CRL.A.No. 784 of 2004(A)

SC.29/1997 of ADDL. SESSIONS JUDGE (FAST TRACK COURT-I), TRIVANDRUM
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APPELLANT/ACCUSED:

SREEDHARAN PILLAI,
S/O. NEELAKANDA PILLAI, C.NO.7881,
CENTRAL PRISON, THIRUVANANTHAPURAM-695 012.

BY ADV. SMT.SANGEETHA LAKSHMANA

RESPONDENT/STATE:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & T.R. RAMACHANDRAN NAIR, JJ

CRL.A.NO.784 OF 2004

Dated this the 29th March, 2007

JUDGMENT

Koshy, J

The accused was convicted and sentenced for the offences punishable under sections 302 and 201 IPC. The appeal was preferred from the jail. The Prosecution case is that, on 13.5.1993 at 10.45 p.m. deceased Thapasimuthu Nadar entered into the middle room of the house known as Roadinkara house at a place called Pinakode in Perumkadavila Village, wherein the accused is residing along with his wife PW17 and his two children aged 9 and 6 years, and attempted to molest PW17 by forcibly catching hold of her and hearing a loud calling of PW17, the accused who was attending his nature's call in the nearby estate reached there by running and thereafter a scuffle took place between the accused and deceased Tapasimuthu Nadar, as a result of which Tapasimuthu Nadar fell on the Varandhah of the house, a portion of which is being used as a cattle shed by hitting the front and left side head forcibly on the northern wall of the Varandah, thereby deceased Tapasimuthu Nadar was seated in the Varandah and at that time the accused with the intention of causing the

death of deceased Tapasimuthu Nadar and he by knowing fully well that his acts would be sufficient in the ordinary course of nature to cause death, stabbed him with MO4 folded pen knife on the right side of his neck by standing behind Tapasimuthu Nadar and thereafter the accused with the intention of causing disappearance of the evidence of the commission of the offence taken Tapasimuthu Nadar and pushed him in the channel 4 meters and 5o cms north west from the north western side of the Pinacode Panchayat pond which is 320 meters away from the house of the accused and thereafter cut him with MO3 chopper on his left ear and neck 7 times and thereafter washed off MO3 and 4 as well as the blood stained portion of the Varandah, courtyard and wall by coating with cowdung and thereafter scratched off the blood stained earth and then placed the dhothi and Juba worn by deceased Tapasimuthu Nadar kept by him in the house of the accused by placing the same in the left axuilla and thereafter entrusted MO4 folded knife to PW20, thereby caused disappearance of the evidence of the commission of the offence with a view to screen him from legal punishment and thereby committed offences punishable under the aforesaid sections.

2. PW1, the son of the deceased gave Ext.P1 F.I.R. He has not seen the incident but he identified the body. PW17, the wife of the accused, the alleged eye witness became

hostile and denied having any knowledge of the incident. She only stated she saw the dead body lying near the Thodu. No other eye witnesses were examined to prove the case. Pws.4,8 and 11 were examined to show that the accused as well as the deceased were seen together at about 10.p.m near the house of the accused. Since on the basis of the last seen theory and accused had no explanation as to what happened thereafter, the trial court found that he is guilty of the offences as charged. Initially CW36 conducted the investigation. He died subsequently. So he was not examined. PW29, who conducted the investigation stated that CW36 almost completed the investigation and prepared the draft charge sheet. In the above draft final report there were five accused persons and one of the accused was PW11. However, in view of the complaint of the accused, CW36 was changed and investigation was entrusted with Crime Branch and CW29 continued the investigation and finally except the accused who was finally charge sheeted, others names were deleted. PW11 stated that he saw accused and deceased sitting together near the house of the accused, while he was returning from the house of PW16 after dressing the wound in his leg at 9.30 p.m. He is the immediate neighbour of the accused. PW16, a nurse, also deposed the same version in the Chief examination but in cross-examination, it is stated that she originally stated

(161 statement) to the police that PW11 came to her house for dressing up a wound at 12 'O' clock but later she changed the version. It appears that PW16 changed the version for the convenience of PW11. PW8, a neighbour deposed that he knew deceased Tapasimuthu Nadar but he has no acquaintance with the accused. While he was returning from the work, he saw about 6 persons sitting in the bridge in front of the house of the accused. He was not declared hostile. In cross examination he again stated as follows;

He also stated that he had no knowledge about the identity of the persons who were sitting along with the deceased. PW4 is a close relative of the deceased. According to him, he went to the house of PW3 for house warming ceremony. It was in the morning. Total of five persons including the deceased took lunch from the house of PW3. All of them returned to their house at 9.30 p.m. After PW4 reached his house he again went back to the house of PW3 in the night. (quite unnatural). At that time (10.p.m) he saw the deceased and accused in front of the house of the accused. The story of PW4 that he came to the house of PW3 in the

morning and returned at 9.30 p.m and again went back at 10 p.m is not believable. It is true that the sniffer dog also went to the house of the accused. Naturally, when the dog who smelt the dead body went near the house of the accused as death occurred near or inside the house of the accused. Soil collected from the verandah of the house of the accused contained human blood. MO.3 chopper stated to have been used by the accused and recovered as per his alleged confession did not contain any blood stain as per Ext.P10 chemical analysis report. MO.4 knife said to have been recovered on the basis of disclosure by the accused though had blood stains, it is not proved whether it is human blood or not.

3. The post mortem report (Ext.P8) shows the following ante-mortem injuries.

> "1. Multiple small abrasions over an area 4x4 cm on the forehead just to the left of midline and 0.5 cm above eye brow. The scalp underneath and around contused over an area 5x5 cm involving its whole thickness.
>
> 2. Contusion of whole of left temporalis muscle
>
> Brain (1150 G) showed thick subdural bleeding (0.5 cm thick) on the base and top. Signs of raised intracranial tension present.
>
> 3. Incised wound 3x1x2.5 cm horizontally placed on the right side of neck with its front end 7.5 cm below ear lobule. Tailing 3 cm long and 4.5. cm long seen

extending horizontally backwards and forwards from its back and front ends respectively. The sternomast muscle, internal jugular vein and the transverse process of fifth cervical vertebra found cleanly cut.

4. Incised wound 2.5x0.3x0.5 cm obliquenly place don the left ear lobule 0.5 cm above its lower end.

5. Incised wound 8.5 x 2x 0.3 2 cm, obliquely placed on the left side of neck its upper front end being 1 cm behind the root of ear lobule.

Injury Nos.(4) & (5) were in the same oblique line.

6. Incised wound 5.5. x 0.3 x 0.2 cm on the left side of neck, oblique, parallel to and 1 cm above the back part of injury NO. (5).

7. Incised wound 9 x 0.3 x 0.2 cm on the left side of neck oblique, parallel to and 0.9 cm below injury No.5

8. Incised wound 9.5 x 0.3 x 0.2 cm on the left side of neck oblique, parallel to and 0.4 cm below injury No.7.

9. Incised wound 10x0.3x0.2 cm, on the left side of neck, oblique, parallel to and 1.2 cm below injury No.8.

10. Incised wound 10.5 x 0.3 x 0.2 cm on the left side of neck, oblique, parallel to and 0.5 cm below injury NO.9.

11. Abrasion 1.5 x 1 cm on the back of root of right forefinger."

According to the doctor, the deceased died due to injuries sustained to head and right side of neck. Sample of blood

was sent for chemical analysis. Ext.P9 chemical analysis report disclosed that the blood of the deceased contains 115 mg ethyl alchohol in 100 milliliters of sample blood. The doctor(PW12) deposed that he was fully drunk. He further deposed as follows;

> "Injury No.1 could be caused when that portion of body came into contact forcibly with any hard surface or object. Injury No.2 could be caused by a blunt impact either by beating with a blunt object or by a fall with that portion of the body forcibly came into contact with any hard or blunt object or surface. Injury Nos.1 and 2 with their internal effects either independently in combination is sufficient in the ordinary course of nature to cause death. Injury No.3 could caused with a weapon like penknife shown to me and that sharp tip of the knife coming into contact with the stain during infliction and withdrawal. Injury Nos.4 & 5 could be caused by cutting with a weapon like chopper shown to me. A single infliction

> can produce the injury. Injury Nos.4 to 10 could also be caused with the said weapon. At the time of infliction of injury Nos.6 to 10 the victims should have been in a recumbent posture."

He also stated that "injury No.4 could be caused by coming into contact with any hard or rough object or surface with that portion of the body." In cross examination he stated as follows;

> "Injury Nos.1 and 2 could caused by beating with blunt object having appropriate diamention. I can only say that injury No.1 could be caused by local blunt force and injury No.2 could be caused by using any blunt object on forcible fall. Injury No.3 could be caused by an sharp edged weapon having appropriate diamension. It could also be caused by slaship with a weapon having appropriate diamensions. I cannot answer since the nature of weapon is to be specified and slaship action by a sward will not produce the injury. Injury Nos.4 &5 could also be caused by different inflictions. It can be produced

provided the length of the sharp edge of the weapon coming into contact with ear lobule is only 2.5 cm in length. Injury Nos. 6 to 8 could be caused by any sharp edged weapon having sufficient blade length.

He also stated that these injuries would have been caused by an attack by a group of persons or by use of many weapons by a single person himself. From the nature of injuries we see that more than one weapons were used. It is not possible to cause these injuries by the accused alone by using MOS.3 and 4 weapons. Therefore, we of the opinion that there could have been more than one accused. Even otherwise, going by the prosecution case as contained in the charge sheet, the deceased trespassed into the house of the accused after fully drunk and tried to molest the wife of the accused who was having two small children. She cried allowed and the accused who went for attending his nature's call came running and thereafter the incident occurred. Therefore, even if the accused has committed the crime there is justification as a right of private defence. The right of private defence can be exercised when be apprehends danger to himself or to his close relatives. The measure to be adopted in private defence cannot be measured in a golden scale. Whether neighbours also helped the

accused in preventing the deceased from molesting the wife of the accused or along with deceased his friends like PW11 and others also went inside the house of the accused to molest the wife of the accused are all possibilities. Even if accused exceeded the right of private defence, he was in prison for about four years and that is sufficient punishment, even if he is convicted under Sections 304 Part II I.P.C. In this case, the prosecution has definitely changed the case after PW29 took over investigation and tried to save some of the persons including PW11 who were also involved. In any event, accused cannot be convicted merely on the basis of last seen theory as PW8 who was not declared hostile stated that he saw deceased with five other persons before the incident in front of the house of the accused. The prosecution failed to prove the manner in which the crime was committed. Therefore, the accused is entitled to the benefit of reasonable doubt.

4. In the result, conviction and sentence of the accused passed in SC.NO.29/97 by the Additional Sessions Judge Fast Track Court No.1, Thiruvananthapuram are set aside. The accused is acquitted. He shall be directed to

be released from jail forthwith, unless he is required in connection with any other offence.

Appeal is allowed.

J.B.KOSHY, JUDGE

vi. **T.R.RAMACHANDRAN NAIR, JUDGE**

J.B. KOSHY & T.R. RAMACHANDRAN NAIR, JJ

CR.A.NO.784 of 2004

JUDGMENT

DATED 29.3.2006